IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11648 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNCIPAL CORPN.

Versus

MOMAIYA KARSHANBHAI

Appearance:

1. Special Civil Application No. 11648 of 1994

MR KV GADHIA for Petitioner No. 1

MS KRINA THAKKAR for MR YOGESH S LAKHANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr. K.V.Gadhia

appearing on behalf of petitioner and learned advocate Ms. Krina Thakkar appearing on behalf of respondent.

2. In the present petition, petitioner has challenged the award passed by the Labour Court, Rajkot in Reference No. 1697 of 1987 dated 26.11.1993 wherein Labour Court has set aside the termination order and granted reinstatement with continuity of service and with 40% back wages of interim period. The said award has been clarified by the Labour Court, Rajkot by order dated 17.3.1994 granting the relief of reinstatement which was not earlier granted. Both these orders are under challenge by the petitioner before this Court.

3. Learned advocate Mr. K.V.Gadhia appearing on behalf of the petitioner has submitted that in pursuance to the award, the respondent workman has been reinstated in service by the Corporation. Now, he submitted that question is about 40% back wages which has been awarded by the Labour Court against the Corporation. He submitted that respondent workman was working as a daily wager and his service was terminated and now Labour Court has granted 40% back wages which is a burden upon the public exchequer. Therefore, such benefit should not have to be granted by the Labour Court. Once gainful employment to some extent is accepted by the workman, he, therefore submitted that Labour Court has committed gross error in granting the reinstatement and 40% back wages in favour of the respondent workman.

4. Learned advocate Ms. Krina Thakkar appearing on behalf of the respondent submitted that workman has completed 240 days continuous service, that is not disputed by the Corporation and Section 25 F of the Industrial Disputes Act ('the Act' for short) has not been followed by the Corporation and, therefore, according to her submission, order of termination become ab initio void and result thereto, workman is deemed to be in service for all purposes but, Labour Court has rightly deducted the amount of gainful employment and, otherwise, the workman is entitled normal relief of full back wages. Therefore, Labour Court has not committed any error while passing such award and, therefore, no interference is required by this Court.

5. I have perused the award passed by the Labour court as well as order which has been corrected by the Labour Court subsequently, upon application Exhibit-28. Most of the facts are not in dispute. Service of the workman was terminated on 12.5.1987. According to the certificate given by the Corporation, the respondent

workman was working as a Cleaner in Tankar from 1984 where he had worked for 7 days in the year 1985. He has worked for 234 1/2 days and thereafter in 1986 he has completed 286 days. These are the undisputed facts based on certificate Exhibit-17. It was admitted by the Corporation. Therefore, at the time of terminating the service of the workman Section 25 F has not been followed by the Corporation and, even it is not the case of the Corporation that they have followed the procedure under Section 25 F of the Act. The Labour court has also come to conclusion that, to violate the mandatory provisions of Section 25 F of the Act, the order of termination is bad and ab initio void. This view has been taken by the Apex Court in the case of Mohan Lal V. The Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253), wherein, the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25 F has not been complied with, retrenchment bringing about termination of service is ab initio void, continuing the Supreme Court has held in para 16 of its judgement:

"16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

In yet another judgement of the Supreme reported in Management of Karnatak State Road Transport Corporation, Bangalore V. M.Boraiah and Another (AIR 1983 SC 1320) the Supreme Court had occasion to consider the retrenchment of a probationer. In that case also the Supreme Court has held:

"Once the conclusion is reached that retrenchment as defined in Section 2(oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Sec. 25F of the Disputes Act had not been complied with in these cases. Counsel

for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Sec. 25F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld that Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs.5000.00. "

Thus from the above said judgements it is clear that if the pre-condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated, must be deemed to be in continuous service."

6. Looking to the observations made by the Apex Court as referred above, once the termination order is violated mandatory provisions of Section 25F, then order of termination is ab initio void and workman is deemed to be service for all purposes. There is no need to pass order of reinstatement. By implication itself, workman is entitled the right of reinstatement. Here, there is no dispute about facts that, at the time of terminating the service, petitioner Corporation has not followed the procedure under Section 25F of the Act. Thereafter, Labour Court has considered the evidence of the workman that he has gainfully employed at Rs.100/- per month which was admitted by him and ultimately that part has been deducted by the Labour court reasonably and come to the conclusion that the workman is entitled 40% back wages of interim period.

7. I have perused the award passed by the Labour Court and I have also considered the reasoning given by the Labour Court. The Labour Court has rightly discussed the oral as well as documentary evidence which are on record. For that, Labour Court has not committed any error. There is no procedural irregularity committed by the Labour Court and therefore, according to my opinion, on the contrary Labour Court has passed right and reasonable order in favour of the respondent workman. This Court having very limited jurisdiction under Article 227 of the Constitution of India. Judicial review, having some limitation; this aspect has been considered

recently by the Apex Court in the case of SYED T.A. NAQSHBANDI AND OTHERS v. STATE OF JAMMU & KASHMIR AND OTHERS, (2003) 9 SCC 592. Head Note 'H' is quoted as under:

> "Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such, Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts."

8. In view of the above observations made by the Apex Court and considering the undisputed facts which are on record that though workman has completed 240 days as per certificate vide Exhibit-17, even though compliance of Section 25F has not been made by the Corporation. Therefore, order of termination rightly held to be ab initio void in view of the gainful employment of Rs.100 per month. Labour Court has rightly granted 40% back wages. For that Labour Court has not committed any error. Therefore, accordingly to my opinion, no interference is required while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.Rathod,J)

Jayanti*